IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5214 OF 2005

The Commissioner,
Pimpri-Chinchwad Municipal Corpn. ....Petitioner
V/s.
Rashtriya Shramik Aghadi & Ors. ....Respondents

Mrs.Meena H. Doshi for the Petitioner.

Mr.N.A. Kulkarni for Respondent No.1.

Mr.G.S. Godbole with Mr.G.H. Keluskar for Respondent No.2.

Mr.P.P. Kakade, AGP for Respondent Nos.5 and 6.

CORAM : F.I. REBELLO, &
S.J. VAZIFDAR, JJ.
DATED : 2ND MARCH, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. The first Respondent is a registered trade union. Respondent Nos.2, 3 and 4 are Sulabh International, Vishal Enterprises and M.P. Enterprises respectively. Respondent No.5 is the Assistant Labour Commissioner, Pune.

3. The Petitioner has challenged the orders passed by Respondent No.5 dated 28.6.2004 and

31.8.2004. By the order dated 28.6.2004, Respondent No.5 held that as per Rule 25(2)(iv)(b) of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971, the wages payable to the workmen of the contractors viz. Respondent Nos.2, 3 and 4, shall be the same as the wages payable to the employees of Respondent No.1 as they did the same kind of work (sweepers and scavengers).

. By the order dated 31.8.2004, the review filed by the Petitioner against the order dated 28.6.2004 was dismissed.

4. Respondent Nos.2, 3 and 4 are the agencies with whom the Petitioner had entered into agreements on a principal to principal basis for the maintenance of various toilet blocks. The question is whether they are entitled to the same payment as the permanent employees of the Petitioner performing the same work.

5. Respondent No.1 had filed Writ Petition No.2193 of 2001 against the Petitioner and Respondent Nos.2 to 4 allegeding that the contract between the Petitioner and Respondent Nos.2 to 4 was sham and bogus and that the workers engaged by Respondent Nos.2 to 4 are paid meagre salaries as compared to the wages

paid by the Petitioner to their own employees who were performing the same or similar work. Respondent No.1 therefore sought a direction for abolishing contract labour for sanitation work and for payment and other benefits including the same scale of pay as the employees of the Petitioner. It was contended before the Division Bench that the wages paid were meagre.

6. By an order dated 24.9.2003 various directions were passed by the learned Division Bench. One of the direction, was in respect of abolition of contract labour. Based on the report of the Board in compliance with the direction, the appropriate Government, in the instant case the State Government, has chosen not to abolish the contract labour for the work of sanitation. The other relevant direction for the purpose of this Petition is that Respondent No.1 was granted liberty to make a representation to the Additional Commissioner of Labour/Respondent No.5 with regard to fixing proper wages of contract labourers and the Commissioner of Labour was directed to decide the said application within three months.

7. Pursuant to the directions of this Court the respondent No.2 addressed a communication to the Additional Commissioner for Labour, Pune. That

application could only be in terms of Rule 25 of the Rules framed by the State of Maharashtra under the Maharashtra Contract Labour (Regulation and Abolition) Act, 1971. Rule 25(2)(iv)(b) sets out that where, the workman employed by the contractor perform the same kind of work as the workmen or a class of workmen directly employed by the principal employer, the rates of wages payable to the workmen by the contractor shall be the rates payable to the workmen directly employed by the principal employer doing the same kind of work. In other words the test is whether the workmen engaged by the contractor are doing the same kind of work as those directly employed by the principal employer.

. Respondent No.1 made a representation to the Additional Labour Commissioner in terms of the directions of this Court. They quoted Rule 25(5)(a) of the Rules framed by the Central Government. The terminology is similar of Rule 25(2)(iv)(b). The Central Rules set out that once the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment. In the application it was set out that there was no difference between the

nature of work done by Class IV employees (Direct employees) and done by the members of the respondent No.1 Union. Reference was also made to the Judgment of the Supreme Court reported in 1985 (50) F.L.R. 205. It may be mentioned that merely because the wrong rules were quoted, would be of no consequence as there were rules under which the power could be executed.

. The petitioner herein filed a reply. It was their contention that they required certain specialised services and these specialised contractual services are obtained by the PCMC/through different agencies, which are engaged as contractors by the PCMC. They have engaged contractors for carrying out house keeping work, scavenging and sweeping in the premises and have entered into a valid contract with the contractors. It was further set out that the activities of the employees of the contractor, basically fell into the categories of Sweepers and Scavengers.

. Reply was filed on behalf of the respondent No.2 in this petition. The basic contention was that they are not an industry and that they are doing voluntary social work. They purported to rely on

various judgments to contend that there was no relation of Master and servant between the persons engaged and who are are members of the respondent No.1 and as such no order could be passed against him. It may be mentioned that the stand of the Petitioner is that they have engaged Respondent No.2 on contract basis and are paying remuneration.

. Reply was also filed on behalf of respondent No.3-Vishal Enterprises. They admitted that they have undertaken the job work of cleaning the toilet blocks and maintenance. It was also set out that the employees go to various places for cleaning of toilet blocks and they perform the job as per the technique which they have developed. Nature of work was 40% relates to cleaning and flushing of toilets and 60% relates to maintenance of the toilet blocks. It was contended that on that basis that the application of the respondent No.1 should be rejected.

. Similarly the respondent No.4 also filed their reply and contended that they are engaged in providing Housekeeping and Cleaning activities for the petitioner at Yeshwantrao Chavan Memorial Hospital. For the reasons set out in the Application, they prayed that the application be rejected. The learned

Additional Commissioner after considering the various contentions and the stand of the parties was pleased by the impugned order dated 28th June, 2004 to allow the application by holding that the workmen of the contractors are performing the work mainly of sweepers and scavengers and that the regular employees of P.C.M.C. are also preforming the work of sweepers and scavengers. As such granted relief that the contractors workmen should be paid wages payable to the employees of the PCMC (Sweepers and Scavengers) doing the same kind of work. Before passing the order the petitioners and respondents were directed to furnish information about the names of the cleaners, their designation and wages, total number of permanent employees doing cleaning work, their place of recruitment/appointment, hours of work, wages paid to them and other amenities given to them. Respondent Nos.2 to 4 failed to produce the records or material. It is this order which is the subject matter of challenge by the principal employer, the petitioner.

. The three contractors have chosen not to challenge the order though appearance has been put up on behalf of the respondent No.2.

8. The only question urged before us, was, that

by the impugned order Respondent No.5 had wrongly come to the conclusion that the members of Respondent No.1 were performing the same or similar work as the permanent employees of the Petitioner.

9. Mrs.Doshi, the learned counsel appearing on behalf of the Petitioner contended that the salary of the employees of the contractors i.e. Respondent Nos.2 to 4 cannot be compared with the salaries of the regular employees of the Petitioner as the work performed by these two sets of employees was entirely different in nature. Before us this submission was founded on the basis that the employees of the contractors barely worked for two to three hours with the Petitioner which was not the case with the permanent employees of the Petitioner.

10. Before dealing with this aspect it is pertinent to note as recorded in paragraph 27 of the impugned order, that the Deputy Commissioner of Labour, Pune along with other officers, with a view to ascertaining the position, visited various zones of Respondent No.1 where the workers were actually working and interrogated some of them. The report submitted states that the workmen of the contractors were performing work mainly as sweepers and scavengers

which was the same as the work performed by the employees of the Petitioner.

11. As observed earlier, the only ground on which the impugned order was challenged before us in this regard was that the workmen provided by Respondent Nos.2 to 4 actually worked only for two to three hours a day for the Petitioner and thereafter worked elsewhere at other jobs. This was denied by Respondent No.1.

12. It is important to note, as recorded in paragraph 26 of the impugned order dated 28.6.2004, that the union had submitted the list of workmen of the contractors showing their names, designations, duty hours, wages etc. It is further important to note that during the course of the hearing before Respondent No.5, the Petitioner and Respondent Nos.2 to 4 were given an opportunity to produce their muster roll and other necessary details. However, only the Petitioner produced the same.

13. The members of Respondent No.1 are sweepers and scavengers. They produced whatever evidence they had. If it was the contention of the Petitioner and Respondent Nos.2 to 4 that the members of Respondent

No.1 worked only for two to three hours, the onus was on them to establish the same. They were given an opportunity of producing the evidence. Only the Petitioners produced their muster rolls. Respondent Nos.2 to 4 did not produce any books or records. This is significant as it is the records of Respondent Nos.2 to 4 which would contain the details of the concerned workers including their working hours. It was not their case that their records did not contain any such details. We hasten to add that in any event a mere statement to that effect without the records being produced may not have been of any assistance to them. It is further important to note that it is not even their case that they did not have any other documents indicating the terms of employment of the members of Respondent No.1.

14. It was submitted that the Petitioner cannot be faulted for Respondent Nos.2 to 4 having failed to produce the relevant record.

15. We do not agree. Respondent Nos.2 to 4 are the Petitioner’s contractors. It is not the Petitioner’s case that there was any animosity between the Petitioner and Respondent Nos.2 to 4. The Petitioner could always have called upon Respondent

Nos.2 to 4 to produce the documents. It is not their case that they in fact called upon them to produce the records and that despite the same Respondent Nos.2 to 4 refused to do so.

16. In these circumstances, an adverse inference must justifiably be drawn against the Petitioner and Respondent Nos.2 to 4 that had they produced the relevant records, the same would have established the case of Respondent No.1 and militated against their case.

17. In *T.S. Murugesam Pillai v. M.D. Gnana Sambandhya Pandara Sannadhi & Ors., AIR 1917, Privy Council 6*, the Privy Council held as under :-

> " A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough : they have no responsibility for the conduct of the suit ; but with regard to the parties to the suit it is, in their Lordship’s opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

18. The primary liability for payment is that of Respondent Nos.2, 3 and 4. It is only if they fail to pay the wages that the same may be recovered from the Petitioners.

19. In the circumstances, the impugned order warrants no interference. The Writ Petition is accordingly dismissed but with no order as to costs.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)